

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

El Paso Electric Company,  
Enron Power Marketing, Inc., and  
Enron Capital and Trade Resources Corporation

Docket No. EL02-113-000

Enron Power Marketing, Inc. and Enron Energy  
Services, Inc.

Docket No. EL03-180-000

Enron Power Marketing, Inc. and Enron Energy  
Services, Inc.

Docket No. EL03-154-000

**ATTORNEY GENERAL OF WASHINGTON  
MOTION TO INTERVENE OUT OF TIME**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (FERC), 18 C.F.R. §§ 385.212, .214 (2004), the Attorney General of the state of Washington respectfully moves to intervene in the above-captioned proceeding. Pursuant to FERC Rule 214(d), there is good cause for granting intervention at this stage in the proceeding, there will be no disruption to the proceeding by the grant of intervention, there will be no burden upon existing parties due to the intervention, and intervention will further the public interest.

**I. IDENTITY AND INTEREST OF MOVING PARTY**

**A. Identity of Moving Party**

1. Communications to the Attorney General of Washington regarding this proceeding should be directed to:

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Olympia, WA 98504-0100  
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## **B. Interest of the Attorney General of Washington**

2. The Attorney General is an independent constitutional officer who represents the people of the state of Washington. Washington Const. Art. III, § 21. It is her paramount duty to protect the interests of the people of the state. *Reiter v. Wallgren*, 28 Wn.2d 872, 880, 184 P.2d 571 (1947). The Attorney General has a substantial interest in ensuring that markets, where they exist, are effective and efficient to provide consumers with the benefits of competition. She is empowered by the laws of the state of Washington to represent the citizens of the state in matters relating to the public interest, including authorization to represent the public in regulated utility matters, such as rates, services, and practices.

3. The Attorney General sought and was granted status as an intervenor in various other proceedings involving the west-wide energy crisis in 2000-2001.<sup>1</sup> In these proceedings, the Attorney General has argued that the Commission should provide an opportunity for wholesale customers in Washington to seek remedies for unjust and unreasonable, or otherwise unlawful, rates charged by various sellers of electricity.

4. The state of Washington currently has a claim in the pending Enron bankruptcy proceeding<sup>2</sup> for disgorgement, restitution, damages, civil penalties, and other relief in the sum of \$245 million.

## **II. FACTS SUPPORTING MOTION TO INTERVENE OUT OF TIME**

5. The Commission has previously determined that markets in California were dysfunctional and those markets affected prices in the Pacific Northwest,<sup>3</sup> and has

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<sup>1</sup> *Puget Sound Energy v. All Jurisdictional Sellers of Energy and/or Capacity Markets in the Pacific Northwest Including Parties to the Western Systems Power Pool Arrangement*, FERC Docket EL01-10(the Pacific Northwest Proceeding); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*, FERC Docket No. EL00-95, *et al.* (the California Refund Proceeding).

<sup>2</sup> *In re Enron, et al.*, No. 01-16034 ALG (Bkr. S.D.N.Y.).

<sup>3</sup> *Puget*, 103 FERC ¶61,348, at para. 32 (June 25, 2003).

noted that there is an “interdependence” among the western markets.<sup>4</sup> The Commission has yet to provide relief for purchasers from those rates.

6. On June 25, 2003, the Commission commenced this proceeding by issuing an Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior Through the Use of Partnerships, Alliances or Other Arrangements and Directing Submission of Information.<sup>5</sup> As Chairman Wood noted in his statement at the time, this proceeding was initially conceived to consider evidence that might lead to enforcement proceedings against sellers for a relatively limited range of transactions, with the “base remedy being disgorgement of unjust profits associated with any proven violations.”<sup>6</sup>

7. On July 22, 2004, the Commission issued its Order on Initial Decision and Consolidating Dockets in *El Paso Electric Co.*, FERC Docket No. EL02-113-000, 108 FERC ¶61,071, affirming an earlier decision of an Administrative Law Judge finding that Enron<sup>7</sup> violated a condition contained in the Commission’s order authorizing it to charge market-based rates and therefore must disgorge profits of \$32.5 million involving sales involving El Paso’s facilities. The Commission went further “in light of the fact that the Enron-El Paso relationship was a subset of broader Enron relationships and practices in the West,” and consolidated the *El Paso* docket with the proceedings in Docket Nos. EL 03-180-000 and EL03-154-000. The Commission noted the potential broad impact of its *El Paso* decision:

2. . . . We note that based on evidence in this docket, as well as in Docket Nos. EL03-180-000 and EL03-154-000, Enron potentially could be required to disgorge profits for all of its wholesale power sales in the Western Interconnect for the period January 16, 1997 to June 25, 2003.  
. . .

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<sup>4</sup> *San Diego Gas & Electric Co.*, 95 FERC ¶61428, at 62,547 (2001)

<sup>5</sup> *Enron Power Marketing, Inc. and Enron Services Inc., et al.*, 103 FERC ¶61,346 (June 25 Order)

<sup>6</sup> Statement on Today’s FERC Actions, Pat Wood III, June 25, 2003, para. 6.

<sup>7</sup> The parties to the proceeding were Enron Power Marketing, Inc., and Enron Capital and Trade Resources Corp. In its Order, the Commission refers to them collectively as Enron, as do we.

3. This order benefits customers by providing for the comprehensive review of all evidence relevant to Enron conduct that violated or may have violated Commission tariffs or orders and the appropriate remedy for such violations.

8. The Commission's July 22 Order, and the resulting broadening of the scope of the proceeding, has increased the significance of this proceeding to the citizens of the state of Washington. In broadening the proceeding to consider "all" wholesale power sales, the Commission has expanded both the temporal and transactional dimensions of this proceeding, potentially offering a remedy for Washington consumers who were harmed as a result of Enron's activities.

9. Many of Washington's utilities were active participants in the wholesale electricity market, to secure the power necessary to serve their customers. Many made long or short-term contracts with Enron, whose presence in the market was ubiquitous, even as Enron was exercising, and misusing, its authority to charge for sales of electricity at market rates. For example, the cities of Seattle and Tacoma purchased power from Enron. Additionally, the Public Utility District No. 1 of Snohomish County (SnoPUD) entered into a contract with Enron that would have required SnoPUD to pay \$109/MWH for a 25 MW block of power for more than eight years. SnoPUD terminated that contract, and the question of termination payments, for which Enron is seeking approximately \$120 million, is now in dispute.

10. Rates for numerous Washington utilities rose as a result of the manipulation of the wholesale market during the western energy crisis, and consumers have suffered directly as a result. For example,

- The wholesale rates charged by the Bonneville Power Administration increased by over 45%.
- Customers' rates in Seattle and Vancouver went up by 50%.
- The rates of SnoPUD increased by almost 50%.
- Rates in Tacoma increased by over 30%.

These dramatic increases in retail customer rates, due to even more dramatic increases in wholesale rates, has had, and continues to have, a significant adverse impact on Washington's economy and the welfare of many of its individual and business customers.

### **III. MOTION TO INTERVENE**

11. Pursuant to Rules 212 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.212, .214) (2004) the Washington Attorney General respectfully requests permission to intervene in this proceeding and to have the opportunity to participate in further stages of this proceeding. We currently envision that we would participate in support of the Commission exercising its authority to provide remedies for various Washington utilities or other purchasers of electricity from Enron during the relevant period.

12. There is good cause for permitting this intervention at this date. Our filing is timely as to the consolidation of the various dockets into a comprehensive investigation. It is the comprehensive nature of this newly-constituted proceeding, and its attendant potential for disposal of all claims relating to Enron's activities in the western electricity markets over the relevant time period, which forms the basis of our interest on behalf of consumers.

13. There will be no disruption of the proceeding resulting from the intervention of the Attorney General of Washington. As was the case in our participation in other recent FERC dockets, we currently intend to focus on legal issues involving the propriety and means of remedies for customers of Enron during the relevant period.

14. No other party adequately represents the interests of the entire body of ratepayers in the state of Washington. As it is uncertain how distribution of any disgorged profits will be done, it is important that the Commission hear the views of the one party that takes the broader view of *all* ratepayer interests in the state of Washington.

15. For the reasons stated in paragraph 13 above, there will be no prejudice, or additional burdens upon, the existing parties resulting from this intervention.

16. Because no other party can adequately represent all the diverse interests of the ratepayers of the state of Washington and because of the magnitude of the potential claims and relief in this proceeding, participation by the Attorney General of Washington is in the public interest.


#### IV. STATEMENT OF POSITION

17. The Attorney General of Washington will take the position that Enron should, at a minimum, disgorge all profits from its sales to customers during the relevant period.

18. Concurrently with the filing of this Petition to Intervene, the Attorney General of Washington has joined in the filing of a Request for Clarification of the Commission's July 22 Order in the *El Paso Electric* matter (now consolidated with this docket) seeking an order that (i) the Commission did not intend to exclude from the scope of this proceeding an appropriate remedy for Enron contracts that were terminated early and under which termination payments have not yet been made; and (ii) that the Commission did not intend to foreclose parties under disputed terminated contracts from seeking, as an "appropriate remedy" for Enron's violations of tariffs and/or Commission orders, an order that counterparties need not make windfall payments under the terminated contracts.

Respectfully submitted this 4th day of August, 2004.

CHRISTINE O. GREGOIRE  
Attorney General

 FOR  
JEFFREY D. GOLTZ, WSBA #5640  
Deputy Attorney General